

AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 475

Introduced by Senator Florez

February 20, 2003

An act to amend Sections 115880 and 115885 of, and to add Article 1.5 (commencing with Section 115860) to Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code, relating to environmental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 475, as amended, Florez. Public freshwater bathing areas: recreational use: sanitation.

(1) Existing law provides that it is the policy of the state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and safety. Existing law requires that all water supply reservoirs of a public agency shall be open for recreational use by the people of the state, subject to the regulations of the State Department of Health Services. Existing law prohibits recreational uses involving bodily contact with water by any participant, with respect to a reservoir in which water is stored for domestic use, except under specified circumstances.

This bill would require the department, by no later than March 1, 2004, to convene a public advisory group, with specified membership, to advise the department on the development of minimum standards for sanitation of high-use or priority freshwater bathing areas, as defined. The bill would require the department, on or before December 31, 2006, to establish minimum sanitation standards for the recreational use of the public freshwater bathing areas. The bill would impose various duties on the department and local health officers and environmental health

directors in this regard, thereby imposing a state-mandated local program, but would provide that the duties of a local public officer or agency shall only be mandatory during a fiscal year in which the Legislature has appropriated sufficient funds for those purposes.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to these provisions, the local agency shall notify the public by posting a notice to that effect at the public beach.

(2) Existing law requires the department to establish specified minimum standards for the sanitation of public beaches. Existing law requires the health officer with jurisdiction over the area in which a public beach is created to inspect the public beach to determine compliance with these standards. Under existing law, any duty imposed upon a local public officer or agency pursuant to these provisions is only mandatory during a fiscal year in which the Legislature has appropriated sufficient funds therefor.

This bill would provide that if sufficient funds are not appropriated and local agencies do not comply with any duty imposed pursuant to the above provisions, the local agency shall notify the public by posting a notice to that effect at the public beach.

~~The~~

(3) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 115880 of the Health and Safety Code
 2 is amended to read:
 3 115880. (a) The department, in consultation with local health
 4 officers and the public, shall adopt regulations to establish
 5 minimum standards for the sanitation of public beaches, including,
 6 but not limited to, the removal of refuse, as it determines is
 7 reasonably necessary for the protection of the public health and
 8 safety.



1 (b) Prior to final adoption by the department, the regulations
2 and standards required by this section shall undergo an external
3 comprehensive review process similar to the process set forth in
4 Section 57004 of the Health and Safety Code.

5 (c) The regulations shall, at a minimum, do all of the following,
6 by December 31, 1998:

7 (1) Require the testing of the waters adjacent to all public
8 beaches for microbiological contaminants, including, but not
9 limited to, total coliform, fecal coliform, and enterococci bacteria.
10 The department may require the testing of waters adjacent to all
11 public beaches for microbiological indicators other than those set
12 forth in this paragraph, or a subset of those set forth in this
13 paragraph, if the department affirmatively establishes, based on
14 the best available scientific studies and the weight of the evidence,
15 that the alternative indicators are as protective of the public health.

16 (2) Establish protective minimum standards for total coliform,
17 fecal coliform, and enterococci bacteria, or for other
18 microbiological indicators that the department determines are
19 appropriate for testing pursuant to paragraph (1).

20 (3) Establish protocols for all of the following:

21 (A) Determining monitoring site locations and monitoring
22 frequency based on risks to public health.

23 (B) Making decisions regarding public notification of health
24 hazards, including, but not limited to, the posting, closing, and
25 reopening of public beaches.

26 (4) Require that the waters adjacent to public beaches be tested
27 for total coliform, fecal coliform, and enterococci bacteria, or for
28 other microbiological indicators that the department determines
29 are appropriate for testing pursuant to paragraph (1). Except as set
30 forth in paragraph (5), testing shall be conducted on at least a
31 weekly basis, from April 1 to October 31, inclusive, of each year,
32 beginning in 1999, if all of the following apply:

33 (A) The beach is visited by more than 50,000 people annually.

34 (B) The beach is located on an area adjacent to a storm drain
35 that flows in the summer.

36 (5) Provide that the monitoring frequency and locations
37 established pursuant to this subdivision and related regulations
38 may only be reduced or altered after the testing required pursuant
39 to paragraph (4) reveals levels of microbiological contaminants

1 that do not exceed for a period of two years the minimum
2 protective standards established pursuant to paragraph (2).

3 (d) The local health officer shall be responsible for testing the
4 waters adjacent to, and coordinating the testing of, all public
5 beaches within his or her jurisdiction.

6 (e) The local health officer may meet the testing requirements
7 of this section by utilizing test results from other agencies
8 conducting microbiological contamination testing of the waters
9 under his or her jurisdiction.

10 (f) Any ~~city or county or city and county~~ *city, county, or city and*
11 *county* may adopt standards for the sanitation of public beaches
12 within its jurisdiction that are stricter than the standards adopted
13 by the state department pursuant to this section.

14 (g) For purposes of this section, “public beach” means any
15 public beach located within the coastal zone, as defined in Section
16 30103 of the Public Resources Code.

17 (h) (1) Any duty imposed upon a local public officer or agency
18 pursuant to this section shall be mandatory only during a fiscal
19 year in which the Legislature has appropriated sufficient funds, as
20 determined by the State Director of Health Services, in the annual
21 Budget Act or otherwise for local agencies to cover the costs to
22 those agencies associated with the performance of these duties.
23 The State Director of Health Services shall annually, within 15
24 days after enactment of the Budget Act, file a written statement
25 with the Secretary of the Senate and with the Chief Clerk of the
26 Assembly memorializing whether sufficient funds have been
27 appropriated.

28 (2) If sufficient funds are not appropriated and local agencies
29 do not comply with any duty imposed upon a local public officer
30 or agency pursuant to this section, the local agency shall notify the
31 public by posting a notice at the public beach that the local agency
32 is not complying with that duty.

33 SEC. 2. Section 115885 of the Health and Safety Code is
34 amended to read:

35 115885. The health officer having jurisdiction over the area in
36 which a public beach is created shall do all of the following:

37 (a) Inspect the public beach to determine whether the standards
38 established pursuant to Section 115880 are being complied with.
39 If the health officer finds any violation of the standards, he or she

1 may restrict the use of, or close, the public beach or portion thereof
2 in which the violation occurs until the standard is complied with.

3 (b) Investigate any complaint of a person of a violation of any
4 standard established by the department pursuant to Section
5 115880. If the health officer finds any violation of the standards
6 prescribed by the department, he or she may restrict the use of, or
7 close, the public beach or portion thereof until the standard is
8 complied with. If the person who made the complaint is not
9 satisfied with the action taken by the health officer, he or she may
10 report the violation to the department. The department shall
11 investigate the reported violation, and, if it finds that the violation
12 exists, it may restrict the use of or close the public beach or portion
13 thereof until the standard violated is complied with.

14 (c) (1) Whenever a beach is posted, closed, or otherwise
15 restricted in accordance with Section 115915, the health officer
16 shall inform the agency responsible for the operation and
17 maintenance of the public beach within 24 hours of the posting,
18 closure, or restriction.

19 (2) The health officer shall establish a telephone hotline to
20 inform the public of all beaches currently closed, posted, or
21 otherwise restricted. The hotline shall be updated as needed in
22 order to convey changes in public health risks.

23 (d) Report any violation of the standards established pursuant
24 to Section 115880 to the district attorney, or if the violation
25 occurred in a city and, pursuant to Section 41803.5 of the
26 Government Code, the city attorney is authorized to prosecute
27 misdemeanors, to the city attorney.

28 (e) In the event of a known untreated sewage release, the local
29 health officer shall immediately test the waters adjacent to the
30 public beach and to take action pursuant to regulations established
31 under Section 115880.

32 (f) Notwithstanding any other provision of law, in the event of
33 an untreated sewage release that is known to have reached
34 recreational waters adjacent to a public beach, the local health
35 officer shall immediately close those waters until it has been
36 determined by the local health officer that the waters are in
37 compliance with the standards established pursuant to Section
38 115880.

39 (g) (1) Any duty imposed upon a local public officer or agency
40 pursuant to this section shall be mandatory only during a fiscal

1 year in which the Legislature has appropriated sufficient funds, as
2 determined by the State Director of Health Services, in the annual
3 Budget Act or otherwise for local agencies to cover the costs to
4 those agencies associated with the performance of these duties.
5 The State Director of Health Services shall annually, within 15
6 days after enactment of the Budget Act, file a written statement
7 with the Secretary of the Senate and with the Chief Clerk of the
8 Assembly memorializing whether sufficient funds have been
9 appropriated.

10 (2) If sufficient funds are not appropriated and local agencies
11 do not comply with any duty imposed upon a local public officer
12 or agency pursuant to this section, the local agency shall notify the
13 public by posting a notice at the public beach that the local agency
14 is not complying with that duty.

15 SEC. 3. Article 1.5 (commencing with Section 115860) is
16 added to Chapter 5 of Part 10 of Division 104 of the Health and
17 Safety Code, to read:

18
19 Article 1.5. Public Freshwater Bathing Areas
20

21 115860. (a) No later than March 1, 2004, the department
22 shall convene a public advisory group consisting of
23 representatives of local environmental health officers, water
24 agencies, state and local recreation providers, recreation user
25 groups, recreation-oriented businesses, and public interest groups,
26 to advise the department on the development of minimum
27 standards for sanitation of high-use or priority freshwater bathing
28 areas and to make recommendations regarding development of the
29 regulations required by subdivision (b).

30 (b) On or before December 31, 2006, the department shall, by
31 regulation, and taking into consideration the recommendations of
32 the public advisory group, establish minimum standards for the
33 sanitation of public freshwater bathing areas, as the department
34 determines are reasonably necessary for the protection of the
35 public health and safety.

36 (c) For purposes of this article, a “public freshwater bathing
37 area” means a public recreation area located on a freshwater,
38 brackish, or estuarine body of water at which a federal, state, or
39 local agency maintains recreational facilities for public use, and at
40 which bodily contact recreation is not prohibited.

(d) For purposes of this article, a “high-use or priority public freshwater bathing area” means a public freshwater bathing area that meets any of the following conditions, as determined and posted by the local health officer or environmental health director, or the department:

(1) Meets or exceeds high-use density criteria established in regulations adopted by the department pursuant to this section.

(2) Is listed as an impaired water body pursuant to 33 U.S.C. 1313(d)(1)(A) in the federal Clean Water Act, as a result of bacterial contamination and consequent nonattainment of the recreational beneficial use.

(3) Is determined by the local health officer or environmental health director, or by the department, to pose a potential health risk to a significant number of people.

(e) At a minimum, the regulations shall do all of the following:

(1) Require the testing of the waters in all high-use or priority public freshwater bathing areas for microbiological contaminants ~~established pursuant to subparagraph~~, *in accordance with the standards established pursuant to paragraph (3)*, which may include total coliform, fecal coliform, and enterococci bacteria. Testing shall be conducted on at least a weekly basis, from April 1 to October 31, inclusive, of each year, beginning in 2007.

(2) Establish criteria for determining high-use and priority bathing densities.

(3) Establish protective minimum standards for microbiological indicators that the department determines are appropriate for testing pursuant to paragraph (1). In establishing these standards, the department shall consult with the State Water Resources Control Board to avoid inconsistency with water quality control plans and shall also consider the United States Environmental Protection Agency ambient water quality criteria for bacteria.

(4) Establish protocols for both of the following:

(A) Determining monitoring site locations and monitoring frequency based on risks to public health.

(B) Making decisions regarding public notification of health hazards, including, but not limited to, the posting, closing, and reopening of public freshwater bathing areas.

(5) Provide that the monitoring frequency and locations established pursuant to this subdivision may only be reduced or

1 altered in accordance with procedures established in the related
2 regulations.

3 (f) The local health officer or environmental health director
4 shall be responsible for testing the waters adjacent to, and for
5 coordinating the testing of, all public freshwater bathing areas
6 within his or her jurisdiction.

7 (g) The local health officer or environmental health director
8 may meet the testing requirements of this section by utilizing test
9 results from other agencies conducting microbiological
10 contamination testing of the waters under his or her jurisdiction.

11 (h) Any ~~city or county or city and county~~ city, county, or city
12 and county may adopt standards for the sanitation of freshwater
13 bathing areas within its jurisdiction in which bodily contact with
14 the water is not prohibited, that are stricter than the standards
15 adopted by the department pursuant to this section.

16 (i) (1) Any duty imposed upon a local public officer or agency
17 pursuant to this section shall be mandatory only during a fiscal
18 year in which the Legislature has appropriated sufficient funds, as
19 determined by the Director of Health Services, in the annual
20 Budget Act or other statute, for local agencies to cover the costs
21 to those agencies associated with the performance of these duties.
22 The Director of Health Services shall annually file, within 15 days
23 after enactment of the Budget Act, a written statement with the
24 Secretary of the Senate and with the Chief Clerk of the Assembly,
25 memorializing whether sufficient funds have been appropriated.

26 (2) If sufficient funds are not appropriated and local agencies
27 do not comply with any duty imposed upon a local public officer
28 or agency pursuant to this section, the local agency shall notify the
29 public by posting notice at the public freshwater bathing area that
30 the local agency is not complying with that duty.

31 115861. (a) The local health officer or environmental health
32 director having jurisdiction over the area in which a public
33 freshwater bathing area is located shall do all of the following:

34 (1) Determine compliance with the standards established
35 pursuant to Section 115860. If the local health officer or
36 environmental health director determines that the standards are not
37 being met, he or she may restrict the use of, or close, the public
38 freshwater bathing area until compliance with the standards
39 occurs.



(2) Investigate any complaint of ~~person~~ of a noncompliance with standards established pursuant to Section 115860. If the local health officer or environmental health director determines that the standards prescribed by the department are not being met, he or she may restrict the use of, or close, the public freshwater bathing area until compliance with the standards occurs. If the person who made the complaint is not satisfied with the action taken by the local health officer or environmental health director, he or she may report the alleged violation to the department. The department shall investigate the reported violation and, if it determines that standards are not being met, it may restrict the use of, or close, the public freshwater bathing area until compliance with the standards occurs.

(3) Inform any agency responsible for the operation and maintenance of the public freshwater bathing area within 24 hours, whenever a public freshwater bathing area is posted, closed, or otherwise restricted.

(4) Report any violation of the regulations relating to posting, closure, or other restrictions established pursuant to Section 115860, and determined by the local health officer or environmental health director, to the district attorney, or, if the violation occurred in a city and the city attorney is authorized to prosecute misdemeanors pursuant to Section 41803.5 of the Government Code, to the city attorney.

(b) (1) Any duty imposed upon a local public officer or local agency pursuant to this section shall be mandatory only during a fiscal year in which the Legislature has appropriated sufficient funds, as determined by the Director of Health Services, in the annual Budget Act or other statute, for local agencies to cover the costs to those agencies associated with the performance of these duties. The director shall annually, within 15 days after enactment of the Budget Act, file a written statement with the Secretary of the Senate and with the Chief Clerk of the Assembly memorializing whether sufficient funds have been appropriated for these purposes.

(2) If sufficient funds are not appropriated and local agencies do not comply with any duty imposed upon a local public officer or agency pursuant to this section, the local agency shall notify the public by posting notice at the public freshwater bathing area that the local agency is not complying with that duty.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for other
3 costs that may be incurred by a local agency or school district
4 because in that regard any duty imposed upon a local public officer
5 or agency pursuant to this act shall be mandatory only during a
6 fiscal year in which the Legislature has appropriated sufficient
7 funds, as determined by the Director of Health Services, in the
8 annual Budget Act or other statute, for local agencies to cover the
9 costs to those agencies associated with the performance of these
10 duties.

